

## 21 C.J.S. Courts § 72

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### Courts

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## II. Jurisdiction of Courts

### E. Mode of Acquiring Jurisdiction

#### 2. Jurisdiction by Party's Consent, Agreement, Waiver, or Estoppel

§ 72. Personal jurisdiction subject to parties' consent, agreement, waiver, or estoppel

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

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**Generally, a court with subject matter jurisdiction may acquire personal jurisdiction by the parties' consent, agreement, waiver, or estoppel.**

As a general rule, a court's personal jurisdiction over the parties may be conferred by their consent,<sup>1</sup> either express or implied,<sup>2</sup> whether by the party's particular acts,<sup>3</sup> or by agreement<sup>4</sup> or contract,<sup>5</sup> as in a forum selection clause,<sup>6</sup> though not necessarily by a choice-of-law provision.<sup>7</sup> Personal jurisdiction can be conferred by waiver,<sup>8</sup> estoppel,<sup>9</sup> or a general appearance.<sup>10</sup>

A party waives a personal jurisdiction defense by failing to raise it in a timely manner, usually in the party's initial response.<sup>11</sup>

In relation to personal jurisdiction of nonresidents, a party's consent<sup>12</sup> or waiver of personal jurisdiction extends to waiver of the party's due process rights as the basis of a personal jurisdiction challenge.<sup>13</sup> Some states, however, do not recognize consent as a basis for the state courts' personal long-arm jurisdiction as applied to nonresidents<sup>14</sup> and will not enforce a contract conferring personal jurisdiction unless independent grounds exist under the state's long-arm statute.<sup>15</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

In determining whether personal jurisdiction is present, a court must consider a variety of interests, including the interests of the forum state and of the plaintiff in proceeding with the cause in the plaintiff's forum of choice. [Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County](#), 137 S. Ct. 1773 (2017).

A defendant may voluntarily appear in the case and submit to the court's jurisdiction in any number of ways, ranging from failure to timely object to personal jurisdiction, to submission implied from conduct, to express consent to the prosecution of a case before the court. [Allstate Mortgage Solutions Transfer, Inc. v. Bank of America, N.A.](#), 338 So. 3d 985 (Fla. 3d DCA 2022).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 Cal.—*In re Marriage of Obrecht*, 245 Cal. App. 4th 1, 199 Cal. Rptr. 3d 438 (6th Dist. 2016).  
  
Conn.—*Birkhamshaw v. Socha*, 156 Conn. App. 453, 115 A.3d 1 (2015), certification denied, 317 Conn. 913, 116 A.3d 812 (2015).  
  
Mont.—*Garza v. Forquest Ventures, Inc.*, 2015 MT 284, 381 Mont. 189, 358 P.3d 189 (2015).  
  
N.Y.—*Barclays Bank Mexico, S.A. v. Urbi Desarrollos Urbanos, S.A.B. De C.V.*, 114 A.D.3d 479, 981 N.Y.S.2d 10 (1st Dep't 2014).  
  
N.C.—*Capital Bank, N.A. v. Cameron*, 231 N.C. App. 326, 753 S.E.2d 153 (2013), review withdrawn, 367 N.C. 495, 757 S.E.2d 896 (2014) and review withdrawn, 367 N.C. 495, 757 S.E.2d 918 (2014).  
  
Tex.—*Alattar v. Kay Holdings, Inc.*, 2016 WL 145991 (Tex. App. Houston 14th Dist. 2016).  
  
W. Va.—*State ex rel. Dale v. Stucky*, 232 W. Va. 299, 752 S.E.2d 330 (2013).

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Ariz.—*Davis v. Davis*, 230 Ariz. 333, 284 P.3d 23 (Ct. App. Div. 1 2012).

Ill.—*Solargenix Energy, LLC v. Acciona, S.A.*, 2014 IL App (1st) 123403, 384 Ill. Dec. 598, 17 N.E.3d 171 (App. Ct. 1st Dist. 2014).

Tenn.—*First Community Bank, N.A. v. First Tennessee Bank, N.A.*, 2015 WL 9025241 (Tenn. 2015).

Tex.—*Global Paragon Dallas, LLC v. SBM Realty, LLC*, 448 S.W.3d 607 (Tex. App. Houston 14th Dist. 2014).

Wash.—*Worden v. Smith*, 178 Wash. App. 309, 314 P.3d 1125 (Div. 3 2013).
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Ariz.—*Davis v. Davis*, 230 Ariz. 333, 284 P.3d 23 (Ct. App. Div. 1 2012).

Wash.—*Worden v. Smith*, 178 Wash. App. 309, 314 P.3d 1125 (Div. 3 2013).
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Md.—*Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403, 56 A.3d 631 (2012).

N.Y.—*Professional Merchant Advance Capital, LLC v. Your Trading Room, LLC*, 123 A.D.3d 1101, 1 N.Y.S.3d 208 (2d Dep't 2014).

Tenn.—*First Community Bank, N.A. v. First Tennessee Bank, N.A.*, 2015 WL 9025241 (Tenn. 2015).

Tex.—*Alattar v. Kay Holdings, Inc.*, 2016 WL 145991 (Tex. App. Houston 14th Dist. 2016).

Wash.—*Brown v. Garrett*, 175 Wash. App. 357, 306 P.3d 1014 (Div. 1 2013).
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N.C.—*GECCMC 2006-C1 Carrington Oaks, LLC v. Weiss*, 757 S.E.2d 677 (N.C. Ct. App. 2014).

Tex.—*Alattar v. Kay Holdings, Inc.*, 2016 WL 145991 (Tex. App. Houston 14th Dist. 2016).
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Ala.—*Medical Transcript v. Walker Rural Health*, 2015 WL 5192201 (Ala. Civ. App. 2015).

Ill.—*Solargenix Energy, LLC v. Acciona, S.A.*, 2014 IL App (1st) 123403, 384 Ill. Dec. 598, 17 N.E.3d 171 (App. Ct. 1st Dist. 2014).

Md.—*Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403, 56 A.3d 631 (2012).

N.Y.—*Northern Leasing Systems, Inc. v. French*, 48 Misc. 3d 43, 13 N.Y.S.3d 855 (App. Term 2015).

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R.I.—*Sidell v. Sidell*, 18 A.3d 499 (R.I. 2011).

Tex.—*Stauffer v. Nicholson*, 438 S.W.3d 205 (Tex. App. Dallas 2014).

**Software clause ineffective without consent**  
Cal.—*Global Packaging, Inc. v. Superior Court*, 196 Cal. App. 4th 1623, 127 Cal. Rptr. 3d 813 (4th Dist. 2011).

**Clickwrap clause ineffective without consent**  
Ind.—*Jallali v. National Bd. of Osteopathic Medical Examiners, Inc.*, 908 N.E.2d 1168 (Ind. Ct. App. 2009).

**Limited to actual parties**  
N.J.—*YA Global Investments, L.P. v. Cliff*, 419 N.J. Super. 1, 15 A.3d 857 (App. Div. 2011).

**Challenge to validity of clause**

U.S.—Phunware, Inc. v. Excelmind Group Limited, 117 F. Supp. 3d 613 (D. Del. 2015) (applying Delaware law).

Mo.—Hope's Windows, Inc. v. McClain, 394 S.W.3d 478 (Mo. Ct. App. W.D. 2013).

**A.L.R. Library**

Validity and Enforceability of Forum Selection Clauses in Internet Transactions, 84 A.L.R.6th 589.

Enforceability of Floating Forum Selection Clauses, 39 A.L.R.6th 629.

Permissive or Mandatory Nature of Forum Selection Clauses Under State Law, 32 A.L.R.6th 419.

Validity of contractual provision limiting place or court in which action may be brought, 31 A.L.R.4th 404.

U.S.—Aquiline Capital Partners LLC v. FinArch LLC, 861 F. Supp. 2d 378 (S.D. N.Y. 2012) (applying New York law).

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Conn.—Birkhamshaw v. Socha, 156 Conn. App. 453, 115 A.3d 1 (2015), certification denied, 317 Conn. 913, 116 A.3d 812 (2015).

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W. Va.—State ex rel. Dale v. Stucky, 232 W. Va. 299, 752 S.E.2d 330 (2013).

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Mont.—Garza v. Forquest Ventures, Inc., 2015 MT 284, 381 Mont. 189, 358 P.3d 189 (2015).

N.C.—GECMC 2006-C1 Carrington Oaks, LLC v. Weiss, 757 S.E.2d 677 (N.C. Ct. App. 2014).

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N.Y.—Techo-TM, LLC v. Fireaway, Inc., 123 A.D.3d 610, 999 N.Y.S.2d 64 (1st Dep't 2014).

**Transacting business by natural person not consent**

N.Y.—*Pichardo v. Zayas*, 122 A.D.3d 699, 996 N.Y.S.2d 176 (2d Dep't 2014), leave to appeal denied, 26 N.Y.3d 905, 17 N.Y.S.3d 87, 38 N.E.3d 833 (2015).

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U.S.—*Aronson v. Celebrity Cruises, Inc.*, 30 F. Supp. 3d 1379 (S.D. Fla. 2014) (applying Florida law).

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